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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-fourth session

SUMMARY RECORD OF THE 2nd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 4 August 1992, at 10 a.m.

Chairman: Mr. ALFONSO MARTINEZ

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GE.92-12915/4872B (E)

The meeting was called to order at 10.10 a.m.

ORGANIZATION OF WORK (continued)

1. The CHAIRMAN submitted to the Sub-Commission the provisional timetable for the consideration of agenda items; it had been drawn up by the officers, who had taken account of the fact that some documents were not yet available and that some special rapporteurs would be able to introduce their reports only on a given date. The officers had also been at pains to ensure that the meetings of the working group on detention, whose establishment they recommended (agenda item 10), would not coincide with the plenary meetings of the Sub-Commission. In the event that the Sub-Commission decided to establish other working groups, they would meet on 7 and 12 August in the afternoon and the plenary meetings scheduled on those dates would be cancelled.

2. The officers were in agreement to leave it to the Sub-Commission to decide whether the inter-sessional Working Group on the methods of work of the Sub-Commission would meet during the session. The substance of the report of the Working Group (E/CN.4/Sub.2/1992/3 and Add.1) would be considered on 13 and 14 August.

3. The officers recommended, in accordance with established practice, that the following Special Rapporteurs, who were no longer members of the Sub-Commission, should be invited to introduce their reports and to participate in the ensuing deliberations: Mrs. Bautista (item 10), Mr. Bhandare (item 14), Mr. van Boven (item 4), Mr. Mazilu (item 17), Mr. Treat (item 10), Mr. Türk (items 4 and 8) and Mr. Varela Quiros (item 4).

4. It was so decided.

5. The officers also recommended that the Sub-Commission should extend an invitation to Mr. Sölt, the Chairman of the forty-eighth session of the Commission on Human Rights, to report to the Sub-Commission in accordance with paragraph 13 of Commission resolution 1992/66.

6. It was so decided.

7. The officers proposed that, in accordance with established practice, the order of speakers should be: (1) members of the Sub-Commission, who were entitled to take the floor at any time; (2) observers for intergovernmental and non-governmental organizations; (3) government observers.

8. It was so decided.

9. The officers recommended that speaking time should be allocated in accordance with the following rules: (a) members of the Sub-Commission: 20 minutes maximum; (b) observers for intergovernmental and non-governmental organizations: 10 minutes maximum and 15 minutes in total if the item contained several sub-items; (c) government observers: 5 minutes maximum to speak in exercise of their right of reply and, if need be, 3 additional minutes maximum for a second right of rejoinder; (d) special rapporteurs: 30 minutes maximum divided up, by the author, between his introduction and his concluding remarks.

10. Mr. JOINET requested that the speaking time allocated to special rapporteurs should be 35 minutes as in the previous year.

11. The proposals, as amended by Mr. Joinet, were adopted.

12. The CHAIRMAN pointed out that the list of speakers was opened at the beginning of the session and that for each agenda item the closure of the list was announced in due course. He invited speakers to put their names down as early as possible for all agenda items. Moreover, if, during a meeting, there were no more speakers on an agenda item, the next item was introduced without the discussion on the preceding item being necessarily closed.

13. The officers recommended that draft resolutions should be submitted at least three working days before the date scheduled for the vote on them.

14. It was so decided.

15. The CHAIRMAN invited those members of the Sub-Commission who so wished to comment on the provisional timetable introduced by him.

16. Mr. KHALIFA, supported by Mrs. MBONU, asked why it was planned to take up agenda item 5 (b) at the end rather than the beginning of the first week as the Sub-Commission usually did. Did that mean that South Africa was of less concern to the Commission than in the past?

17. The CHAIRMAN replied that the agenda item in question would be taken up at the end of the week only because the report of the Secretary-General on racism and racial discrimination would not be available before that time.

18. Mr. EIDE said that he would like the Sub-Commission to spend more time in future on measures to combat discrimination and on the protection of minorities. He considered that that should be possible with effect from the following year, since the Sub-Commission would no longer, as at present, have to spend two full days on the organization of its work. He also considered that there was no need to set up working groups, apart from that on detention.

19. In view of the tragic conflicts, whether ethnic or other, currently occurring in the world, the Sub-Commission should make sure, in accordance with its decision 1991/107 that it gave due attention to the document entitled "Declaration of Minimum Humanitarian Standards" (E/CN.4/Sub.2/1991/55). That topic could be considered under agenda item 4. In that connection, he informed the members of the Sub-Commission that on Saturday 8 August the Institut Henri Dunant was organizing a debate on the humanitarian rules applicable in cases of emergency and national or ethnic conflict.

20. The CHAIRMAN took note of Mr. Eide's comments.

21. Mr. JOINET inquired how much time would be devoted to considering agenda item 3.

22. The CHAIRMAN said that the item would be taken up in plenary starting that very morning then possibly during part of the morning of 13 August, as well as the entire afternoon of 13 August and the whole morning of 14 August.

In addition, there was such time as the sessional working group would be able to allot to the question, should the Sub-Commission decide to establish such a group.

23. Mr. GUISSE inquired what would be the advantages and disadvantages of establishing such a working group.

24. The CHAIRMAN replied that some officers considered that there might be some overlapping between the work of the working group and that of the Sub-Commission in plenary while others considered that the working group might shed light on a number of issues, thereby simplifying the work in plenary.

25. Mrs. DAES associated herself with Mr. Eide's comments on agenda items 15 and 18. She would particularly like an additional meeting to be allocated to item 15. Since 1993 was to be the International Year for the World's Indigenous People, it would be all to the good if recommendations and resolutions were considered in that context. She recalled that the Secretary-General had specifically requested the Sub-Commission to make its contribution to the celebration of the Year.

26. The CHAIRMAN agreed with Mrs. Daes and thought that it would be possible to give her satisfaction without, however, having to make drastic changes to the timetable.

27. Mrs. KSENTINI said that she wished to comment on the timetable not in her capacity as an officer but as a member of the Working Group on Contemporary Forms of Slavery. Many non-governmental organizations had informed her that their representatives would not be in Geneva as of the first week in order to consider item 13, which was usually taken up at the end of the session. She would therefore like the timetable to be reorganized in the light of that request.

28. The CHAIRMAN thought it unnecessary to restructure the timetable in view of the possibility, expressly stipulated, that if there were no speakers on a specific item, its consideration could be postponed until such time as it had been concluded.

29. Mr. DESPOUY welcomed some 65 Centre for Human Rights fellowship holders who were present in the room to follow the work of the Sub-Commission. The order envisaged for that work seemed to him to be somewhat questionable and he found it rather ironical that item 4 would be taken up only in the third week of the session. It seemed to him that the item, which should be devoted to an exchange of view on events throughout the world between two sessions should for that reason be taken up at the beginning of the session. In that connection he mentioned the situation in the former Yugoslavia, the holding of the Pan-African Congress and the dissolution of the Parliament in Peru.

30. With regard to the question of the establishment of a sessional working group on the methods of work of the Sub-Commission, he thought that such a course would be appropriate since the working group, once established, could clear the ground and simplify the consideration of the question in plenary. In any event, he thought that the question should be settled as soon as possible.

31. The CHAIRMAN acknowledged the importance of item 4, whilst stressing the fact that the time when the Sub-Commission considered a particular point was not a sign of the degree of importance that was attached to it.

32. Mr. JOINET supported the proposal by Mrs. Daes concerning item 15, recalling that the topic was one of the fundamental questions with which the Sub-Commission was mandated to deal. Concerning the establishment of a sessional working group, he proposed that the Sub-Commission should take a decision on it after the introduction, by Mr. Yimer and himself, of the report of the inter-sessional Working Group on the methods of work of the Sub-Commission (E/CN.4/Sub.2/1991/3).

33. The CHAIRMAN supported the idea of postponing a decision on the possible establishment of a sessional working group until after the introduction of the report by Mr. Joinet and Mr. Yimer.

34. It was so decided.

35. The CHAIRMAN proposed that the Sub-Commission should adopt the timetable.

36. The timetable was adopted.

37. The CHAIRMAN, turning to the question of the working group on detention, submitted to the Sub-Commission the proposal by the officers to set up such a working group composed of five members representing the five regions, in whose work all members of the Sub-Commission, as well as representatives of NGOs and Governments would be able to participate.

38. It was decided to set up a working group on detention.

REVIEW OF THE WORK OF THE SUB-COMMISSION (agenda item 3) (E/CN.4/Sub.2/1992/3 and Add.1)

39. Mr. JOINET introduced the report of the inter-sessional Working Group on the methods of work of the Sub-Commission (E/CN.4/Sub.2/1992/3 and Add.1) and reported on the work of the session held by the Group in March 1992 in the course of which it had endeavoured to discharge to the best of its ability the mandate entrusted to it by the Commission on Human Rights, in resolution 1992/66. He drew attention to an initial difficulty encountered by the Working Group when it had considered the precise content of its terms of reference. In point of fact, there arose the question of the method that should be adopted for the consideration of violations of human rights and the submission of a report on that subject to the Commission. The question was one which had been debated extensively and had given rise to numerous papers, but which did not come specifically within the mandate of the inter-sessional Working Group. The Group therefore tried to integrate it in its work by interpreting another Commission recommendation, namely that made to the Sub-Commission to improve the coordination of its work with other United Nations bodies working in the field of human rights.

40. As to the spirit in which the Sub-Commission should work, he said that the inter-sessional Working Group had concentrated on four specific issues: rationalization of the methods of work of the Sub-Commission; restructuring

the agenda; improving coordination with the Commission on Human Rights and other competent organs of the United Nations; strengthening the independence of experts. While referring the members of the Sub-Commission to the report, he drew attention to its salient points and, in connection with improving coordination, he mentioned the invitation to the current Chairman of the Commission on Human Rights to attend the Sub-Commission in order to comment on the recommendations to which the report submitted by it to the Commission had given rise. It was also proposed in the report of the inter-sessional Working Group that the Chairmen of the Sub-Commission and of other bodies working for the defence of human rights should take part in the post-sessional meeting of the officers of the Commission on Human Rights.

41. The Working Group's proposal in respect of strengthening the independence of the Sub-Commission experts took the form of a memorandum addressed to the Under-Secretary-General urging him to implement an opinion of the International Court of Justice, handed down following the Mazilu affair, according the Sub-Commission experts the immunities and privileges to which they were entitled and which should take the form of a certificate.

42. The issue of the rationalization of methods of work had been examined on a priority basis. The Working Group had endeavoured to avoid falling into the trap of reforming the rules of procedure of the Sub-Commission, a matter which came solely within the competence of the Economic and Social Council. He would also like document E/CN.4/Sub.2/1991/16 to be distributed, in particular to the new members of the Sub-Commission, since the proposals made by the inter-sessional Working Group were largely a reformulation of the proposals appearing in that report and on which there had already been consensus.

43. With regard to the content of the guidelines which the Working Group proposed in order to improve the methods of work of the Sub-Commission, those guidelines were arranged under four headings, namely: preparation of studies; submission and adoption of resolutions and decisions; holding of meetings and allocation of speaking time; transitional arrangements. He personally considered that it was neither necessary nor appropriate to set up a sessional group on that question.

44. The CHAIRMAN intervened in order to point out that Mr. Joinet was required to introduce the report of the inter-sessional Working Group but that, as regards the desirability of establishing a sessional working group, it had been decided that a question of substance was involved which would be debated later.

45. Mr. JOINET said that he simply wished to develop paragraph 12 of the report of the inter-sessional Working Group which in fact addressed that question. With regard to the sessional working group set up by the Sub-Commission in decision 1989/104, the inter-sessional Working Group had considered that its terms of reference should be renewed but that it should concentrate on the very important question of the situations of human rights violations brought to its attention and submit its report to the Sub-Commission not later than its forty-fifth session, unless it had the possibility of doing so during the current session. The sessional working group would not, therefore, have to reconsider the work of the inter-sessional Working Group. He was willing to explain to the Chairman why he favoured that proposal. He would, however, go along with the decision of the majority.

46. The CHAIRMAN said that before hearing the arguments in favour or against the establishment of a sessional working group, first of all he would like Mr. Yimer to introduce the second part of the report of the inter-sessional Working Group.

47. Mr. YIMER said that the general introduction of the report made by Mr. Joinet was sufficient for the time being and that each of the proposals formulated would be explained in detail when the substance of the report was considered.

48. The CHAIRMAN, speaking as a member of the Sub-Commission, considered that it would have been helpful to have at that point in time more detailed information on the proposals of the inter-sessional Working Group in order to ascertain whether they deserved a more thorough study; he would not, however, dwell on that point. Speaking as the Chairman, he therefore invited the members of the Sub-Commission to indicate their views not on the substance of the report of the inter-sessional Working Group but on the way in which its work should be considered, namely in plenary or in the context of a sessional working group, to enable the officers to make a formal proposal one way or the other to the Sub-Commission.

49. Mr. KHALIFA said that he did not see why the members of the Sub-Commission could not give preliminary views on the content of the report of the inter-sessional Working Group. He was surprised at that way of working which was contrary to the usual practice and he would like to know whether members were forbidden to make general comments.

50. The CHAIRMAN assured Mr. Khalifa that there was absolutely no question of forbidding members of the Sub-Commission to do anything. The officers had simply thought that, in view of the importance of the proposals contained in it, the report submitted called for an in-depth analysis which would need time, particularly as some members had not yet had an opportunity of studying it, and that it was therefore preferable to confine the discussion to the question of whether or not a sessional working group should be set up. The intention of the officers had simply been to organize the debate better but, once again, there was nothing in the rules of procedure to prevent members of the Sub-Commission from making general comments, if they so wished.

51. Mr. TIAN JIN said that he did not hold any very strong view on the procedure which the Sub-Commission should follow in considering the report of the inter-sessional Working Group. The subject of the report had been under study for a number of years and some of its aspects were highly controversial. He was therefore at a loss to understand the purpose of Commission on Human Rights resolution 1992/66 which established the terms of reference of the inter-sessional Working Group. He did not find it logical that the Commission should prejudge the outcome of its work and he thought it would be better for the report to be considered first in the context of a sessional working group. On the substance of the report, he would have several comments to make, particularly on the suggestions relating to restructuring the agenda of the Sub-Commission, which he did not find on the whole very relevant. Apart from that, he thanked the Working Group for its efforts which helped to advance consideration of the subject.

52. Mr. GUISSE pointed out that in spite of the explanations given by the Chairman, the consideration of the substance of the report of the inter-sessional Working Group had already begun. He would therefore like to know whether he could also comment on the content of the report or whether he should confine himself to procedural issues.

53. The CHAIRMAN said that he would have preferred members of the Sub-Commission to limit themselves to giving their opinion on the way in which the Sub-Commission should proceed in order to consider the report of the inter-sessional Working Group, namely, in plenary or in a sessional working group, but had no objection however to their addressing the substance of the report.

54. Mr. CHERNICHENKO considered that the members of the Sub-Commission should be able to make general comments on the substance of the report introduced by Mr. Joinet if they so wished and if they were in a position to do so. Indeed, an exchange of views on the content of the report might also produce some idea on how best to consider it in detail. He personally favoured the establishment of an open-ended sessional working group, not only because it was the usual practice but also because it would make it possible to save time in plenary. Further, the inter-sessional working group had considered it desirable to retain the sessional working group. He also drew the Sub-Commission's attention to the fact that the inter-sessional Working Group had not studied the methods of considering situations of violations of human rights or the draft proposal which he had submitted on the question (E/CN.4/Sub.2/1992/3/Add.1) with the idea that it would be considered in the context of the sessional Working Group. Consequently, he favoured the establishment of a working group to study the proposals put forward by the inter-sessional Working Group.

55. Mr. EIDE stressed the fact that the inter-sessional Working Group had already studied certain questions in detail which could therefore be considered straight away in plenary without first being referred to another working group. However, he had merely mentioned the question of the global report on situations of serious human rights violations which a sessional working group might well study. He therefore proposed that the Sub-Commission should examine in plenary the report of the inter-sessional Working Group and should instruct a sessional working group to focus exclusively on the issues which had not yet been considered. There seemed to be a misunderstanding in the Sub-Commission and he thought that was the best way to dispel it.

56. The CHAIRMAN said, in order to avoid any misunderstandings, that the question before the Sub-Commission was whether or not a sessional working group should be set up to consider the question of the Sub-Commission's methods of considering violations of human rights and, inter alia, the draft proposal made in that regard by Mr. Chernichenko (E/CN.4/Sub.2/1992/3/Add.1) as well as all the proposals formulated by the inter-sessional Working Group in its report (E/CN.4/Sub.2/1992/3) and all suggestions and comments made on it by the members of the Sub-Commission.

57. Ms. CHAVEZ thanked Mr. Khalifa for emphasizing the need to give the members of the Sub-Commission an opportunity of making general comments on the report introduced by Mr. Joinet. It was obvious that the decisions taken on

the report would certainly influence the work of the Sub-Commission as a whole and it was therefore important to give it due attention. She had listened with interest to all the arguments advanced by other members for or against the establishment of a sessional working group. She thought that the Sub-Commission could consider in plenary the issues already studied by the inter-sessional Working Group, taking up the suggestions made by Mr. Eide in that regard.

58. Mr. JOINET, speaking in a personal capacity and not as the Chairman of the inter-sessional Working Group, considered that in view of the work programme scheduled by the officers, the Sub-Commission must decide at that meeting whether to set up a sessional working group or whether document E/CN.4/Sub.2/1992/3 should be considered directly in plenary. In his view, either the sessional working group was open, all members took part in it in plenary, as it were, or some members of the Sub-Commission did not participate in the work of the group and it would be necessary to restate the substance of its discussions for them in plenary. It was therefore better to consider the report in plenary only, even if that meant spending more time on it. Further, according to paragraph 6 of Commission on Human Rights resolution 1992/66, the inter-sessional Working Group was required to submit a draft decision for examination by all the members of the Sub-Commission, in other words, in plenary. Moreover, by instructing a sessional group to consider the report of the inter-sessional Working Group one might set a precedent and, for example, entrust consideration of the report of the Working Group on Contemporary Forms of Slavery to a sessional group. If, however, a sessional working group was to be set up, it should be in order to start work on the other project already mentioned, inter alia, by Mr. Chernichenko.

59. The CHAIRMAN recalled that the officers had proposed on the previous day to await the end of the debate on the procedure for considering the question before meeting again and making a formal proposal in the light of that discussion. The proposal should be made in plenary the following morning.

60. Mr. KHALIFA considered that to submit directly to the Sub-Commission proposals that were to be prepared straight away in draft decision format was simply to follow the instructions given by the Commission in resolution 1992/66, which not even the officers could modify.

61. Turning to the substance of the report of the inter-sessional Working Group, he said that it was a very detailed document, arranged clearly and logically, but an in-depth consideration of it took time; despite all its qualities, one might well not entirely subscribe to it. As for rules 1 to 7 of the guidelines which appeared in the proposed draft decision, he could only endorse them although they added nothing to what had already been done. However, certain rules that claimed to introduce improvements were actually pointless since, in those cases, a competent sessional chairman could consult the rules of procedure. Rules 10 and 11, for instance, were pointless and could not be binding any more than rules 12, 13 and 14 which, further, introduced nothing new. But it was above all rule 16 which he found unacceptable. The work of the Sub-Commission was not the sort of work that could be performed if constraints of time were imposed, quite the opposite. Further, the Chairman was there to ensure that the discussions proceeded smoothly. If overregulated, they might well lose some of their vitality,

profundity and clarity. The Sub-Commission must be able to reflect at its own pace. Thus far it had avoided over-organization and, when it had been necessary to be brief, its members had been brief by common consent, independently of any ruling. In respect of rule 18, he saw no justification for the distinction between the expert and his alternate, who formed an indissociable entity. With regard to part B, he recalled his frequently stated view, namely, that he strongly objected to the Sub-Commission, an intrinsically unique entity whose independence was the best weapon in the campaign for respect for human rights, subordinating itself to an entirely political and politicized organ.

62. He concluded by reiterating his warning against over-organization which would lead straight to ineffectiveness and by urging the Sub-Commission to let things take their course. He thought that if the document under consideration was to have a future, it would have to be examined in depth; that had not been scheduled for the forty-fourth session of the Sub-Commission and the best course of action would be to refer it to a sessional working group. Such a working group would also be instructed to study the draft proposal on the preparation of the global report on human rights violations submitted by Mr. Chernichenko (E/CN.4/Sub.2/1992/3/Add.1), on which he would also state some reservations.

63. Mr. HELLER, supported by Mr. EIDE, formally proposed that the Sub-Commission should adopt a decision to the effect that consideration of agenda item 3 should take place in plenary. He did not consider it necessary to hold a further meeting of the officers on the subject and thought that the decision could be taken that same morning.

64. The CHAIRMAN said that he had understood that it had been agreed to hold a further meeting of the officers.

65. Mrs. KSENTINI, speaking on a point of order, expressed surprise that the Sub-Commission was considering taking a decision on a recent proposal before doing so on earlier proposals.

66. Mr. YIMER, speaking on a point of order, warned against confusing a simple opinion and a formal proposal for a decision made in conformity with the rules of procedure. In his view, there was only one real proposal.

67. Mr. KHALIFA acknowledged that he had not submitted a proposal in the correct form. It was, however, obvious that he had proposed that once the report of the inter-sessional Working Group had been considered by the Sub-Commission, that report would be referred, with the comments by the Sub-Commission to the sessional working group.

68. Mrs. KSENTINI thought that it was because the subject dealt with by the inter-sessional Working Group was complex that the officers had preferred to give the Sub-Commission an opportunity of discussing its methods of work and seeing the consensus that emerged on the modalities for considering the question. Moreover, the Working Group itself had been anxious that its report should be considered as to substance only when the members of the Sub-Commission had had time to read it carefully. She would have preferred the proposals of the inter-sessional Working Group to be considered beforehand by a sessional working group.

69. Some of those proposals deserved careful study even when they were merely reformulations of proposals already submitted by the sessional Working Group which had met in 1991 with Mr. van Boven in the Chair. However, another point deserved consideration: the change in the terms of reference of the Working Group which its proposals had brought about. The Working Group at the forty-third session had considered the question of a possible report on item 6 as well as certain questions of work, method, and so on, and she wondered whether it was wise at that stage to consider separately matters relating to methods of work, coordination, restructuring the agenda, etc., and matters relating to a report on item 6. She considered all those items to be inextricably linked; the fact that the possible preparation of a report on human rights would inevitably have repercussions on the wording of the agenda was proof of that. The complexity of the question justified the establishment of a sessional working group which would prepare the way for a review in plenary. The working group would not confine itself to expressing a view on the possible preparation of a report but would also concern itself, for instance, with the question of the status of alternates which, in the light of the proposals made by her the previous year, had not been addressed appropriately by the inter-sessional Working Group. It would also be incumbent on the sessional working group to make related proposals, if need be.

70. Mr. JOINET, speaking on a point of order, recalled that it was customary for the Chairman of the inter-sessional Working Group to respond to the comments made on the report by that group. He was prepared to dispense with that formality in plenary to enable the Sub-Commission to pronounce itself without further delay on the possible establishment of a sessional working group.

71. The CHAIRMAN announced the closure of the list of speakers on the question.

The meeting rose at 1 p.m.